1961

Lawrence Butterfield v. Donald G. Chaney : Brief of Appellant

In the Supreme Court of the State of Utah

LAWRENCE BUTTERFIELD,
Plaintiff and Respondent,

DONALD G. CHANEY,
Defendant and Appellant.

No. 9413

BRIEF OF APPELLANT

THOMAS P. VUYK,
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STATEMENT OF FACTS

The Plaintiff-Respondent and Defendant-Appellant entered into a contract in August of 1959 for the landscaping of Appellant's home, the construction of a patio, and retaining wall. Contract price was to be $893.00. Said agreement was signed on 10 August 1959, and immediately thereafter Respondent began work on the above-listed project. A short time after the signing of the contract, Appellant extended the contract to Respondent to include the construction of a cement cinder-block wall at the agreed price of $1,000.00. Subsequent to this, a further extension was entered into for the construction of certain planter boxes running adjacent to the cement cinder-block wall.

Respondent completed the work outlined with the final capping of the cement wall in December of 1959. The lawn was planted approximately October 25, 1959, and failed to grow the following year. Appellant alleged that such failure was due to the poor workmanship of the Respondent, and Respondent alleged that it was due to the failure to water on the part of Appellant.

Appellant paid Respondent $1,000.00. There was a balance due on the contract of $893.00. At pre-trial, Respondent admitted that the cement patio was not in excellent condition, as there was admittedly a slight flaking of the top. Said matter having been admitted, no evidence to the contrary, the trial court allowed an offset against the contract price of $50.00.

During the construction and completion of the above contract, Respondent was not a licensed contractor, as required by the provision of 58-23-1, Utah Code Annotated, 1953. The trial court held, however, that Respondent came under the provisions of 58-23-2(6), Utah Code Annotated, 1953, an exception to the requirement for a contractor's license in that this was a contract of less than $1000.00 value, and as such was incidental and did not require that Respondent be licensed.

It is from this decision that Appellant appeals to this Honorable Court.

STATEMENT OF POINTS

POINT I

THE COURT ERRED IN HOLDING THAT THE CONTRACT WAS ENFORCEABLE

POINT II

THE COURT ERRED IN DETERMINING THAT THE EXCEPTION OF 58-23-2(6) APPLIES.

ARGUMENT

POINT I

THE COURT ERRED IN HOLDING THAT THE CONTRACT WAS ENFORCEABLE.

It has been uniformly held and appears to be the general law that where a license is required for the carrying on of a business, that failure to obtain such license will make any contract entered into void and unenforceable. This general law appears in 53 CJS, Section 59, p. 711:

> "A contract entered into by a person in the course of an occupation or business in which he is engaged without taking out a license or paying the license fee or tax as required by law is void and unenforceable where the statute or ordnance expressly vidiates such contracts or *where it expressly prohibits the carrying on of such occupation or business without a license, permit or approval, or the payment of the tax even though it does not expressly declare such contracts to be void.*" (Emphasis added)

The general law, as outlined above, applies specifically to the situation covered by this appeal. Respondent was a contractor and was engaged to

perform construction work by the Appellant herein. The Respondent did not possess a valid Contractor's License, as provided by the statute, and as such any contract entered into by Respondent is void and unenforceable.

See **Eklund** v **Elwell,** 116, U 521, 211 P2d 849; **Olsen v Reese,** 114 U 411, 200 P2d 733.

Under the provisions of 58-23-3(3), Utah Code Annotated, 1953, wherein the word "contractor" is defined, it states that

> **"any person, who for a fixed sum, price, fee, percentage, or other compensation other than wages, undertakes with another for the construction, alteration, repair, addition to, or improvement of any building, highway, road, railroad, excavation, or othe rstructure, project, development or improvement other than to personalty or any part thereof; . . ."**

The provisions of this statute are clearly regulatory and of a police nature to protect the public from unqualified contractors and are used as a means of regulation by the State. Appellant alleges that had the work been satisfactory to him it would not have been necessary for him to rely upon the protection of said statute; that Appellant paid the Respondent for that work which was satisfactory and at the agreed price, and had clearly shown his good faith in relying on the Respondent's ability as a contractor. However, when the work covered by the contract was not satisfactory, Appellant found it necessary to rely on the protection afforded him by the statutes of this State.

The contract entered into by the parties hereto was for the general beautification and improvement of the Appellant's land. Respondent held himself out to be a qualified and bona fide contractor with the necessary equipment and ability. Appellant alleged that Respondent was not such, and that his inability worked a hardship on Appellant in that Appellant was required to obtain services of another qualified and licensed contractor to rectify the work improperly done under this contract.

It is, therefore, the contention of the Appellant that it was an error on the part of the court to uphold his contract in that it should have been declared void and unenforceable.

POINT II

THE COURT ERRED IN DETERMINING THAT THE EXCEPTION OF 58-23-2(6) APPLIES.

Section 58-23-2(6), Utah Code Annotated, 1953, provides that no license is required if:

> "on *one undertaking* or *project* by contracts or contract performed directly or indirectly by one contractor, the aggregate contract price for which, for labor, materials and all other items is less than $1,000.00 such work or operations being considered as of a casual, minor, or inconsequential nature." (Emphasis added)

The court erred in holding that Respondent fell within the provisions of this exception.

From a reading of the above-cited provision of the Utah Code Annotated, it is clear that this appeal

must necessarily revolve itself around this Court's definition of the terms "undertaking" and "project."

It is clear from the evidence that a contract was entered into and modified twice. All of the work covered by the contract and modifications were inter-related in that they were all part and parcel of the beautification and improvement of Appellant's land. The contract was signed April 10th and was extended a short time later.

This agreement, in aggregate, was well over $1,000.00, and, therefore, the only exception which possibly could be allowed would be that this is more than one project or undertaking.

A careful search of the legislative history fails to indicate what the intent of the legislature was as to what was to constitute one "undertaking" or "project." Further no clear definition has been extended by any court of competent jurisdiction in this state or any neighboring state, and there appears to be a dearth of authority in this area of the law.

The question, therefore, becomes one of determining what is meant in this statute by the word "project." The work agreed upon by the parties hereto was for the general landscaping and improvement of Appellant's grounds. Respondent agreed to the contract, began his work, and while still on the premises with equipment and men and proceeding as agreed, was extended modifications which related to the contract. All of the work was of the same general type. All of the work was done

by one contractor. All was done for the Appellant. There was no great break in time. All was for one purpose — the beautification and betterment of Appellant's lot.

The Court held that project was to be determined by what was in the minds of the parties at the outset. Yet, the Court had difficulty in holding this was all more than one project. On page 228 of the transcript, the Court held that this was all one project, and then a few pages later, held that this was more than one project and therefore fell within the provisions of the exception. (See page 235).

If the definition of the word "project" is to be determined by the plan, as outlined at the outset, the way is open for all types of circumvention by both parties as was outlined by the court. It is the contention of the Appellant that the determination should be from all of the circumstances involved in the entire transaction. All of this is clear from the circumstances outlined above. The type of work should be taken into account, along with the time and place, as well as the knowledge of the parties. Here the circumstances point clearly to a determination that this was all one project.

The Respondent accepted the construction of the cement block wall a short time after he began work on the lawn. He stopped work on the lawn and proceeded with the fence. After completing the fence, he returned to finish the lawn. Appellant respectively submits that this clearly shows the interrelationship of the work, as they were depen-

dent and continuous, so that they were all one project, as such the Respondent should not be allowed to circumvent the law by claiming the exemption. The aggregate price was almost $1,900.00, and could not be considered casual in nature, and the court erred in so holding.

CONCLUSION

Appellant respectfully submits that the court erred in holding the contract enforceable, and, further, that the circumstances are such that the court erred in holding this to be more than one project.

WHEREFORE, we respectfully request the Honorable Court reverse the judgment heretofore entered by the trial court.

Respectfully submitted

THOMAS P. VUYK,

Attorney for Appellant